

UNITED STATES OF AMERICA

v.

DAVID M. HICKS

PO 111 - Hicks

**Defense Request for Investigative
Assistance**

October 12, 2005

1. References (all attached to this filing):

a. Appointing Authority Memorandum for the Presiding Officer, SUBJECT: Request for Investigative Assistance, October 12, 2005.

b. Defense Memorandum for Appointing Authority, SUBJECT: US v. Hicks - Request for Investigative Assistance, September 19, 2005.

c. Appointing Authority Memorandum for MAJ Mori, SUBJECT: Request for Investigative Assistance in US v Hicks, October 12, 2005.

2. The Presiding Officer is in receipt of the references which contain directions to determine whether the defense Request for Investigative Assistance (reference 1b) must be granted in order to provide Mr. Hicks a full and fair trial. The Presiding Officer desires to fulfill his responsibilities under reference 1a as soon as possible and using the procedures in this (PO 111) filing. Consistent with the DoD Directive cited in reference 1b, the defense request is being treated solely as a request for the Appointing Authority to appoint an investigative assistant as a member of the defense team without specifying that the person so appointed shall have any specific authority to access files of any particular entity or agency.

3. If the defense continues in its request, it will provide the Presiding Officer the following:

a. An estimate of the numbers of files or documents, or any such relevant figure which might enable the Presiding Officer to understand the scope of the materiel, which the Investigative Assistant (IA) would be used to review and the current location(s) of those files.

b. A statement concerning the number of similar IAs which are assigned or detailed to the prosecution team.

c. A specific statement concerning the scope and duties of the proposed IA - reference 1b makes requests in at least three separate paragraphs (1, 5, and 8). In this regard, it is suggested that you separate the IAs duties in obtaining and analyzing information.

d. The name of the member of the defense team who would supervise the IA in the performance of duties.

e. Why members of the defense team cannot perform the functions you would have the IA perform.

f. The effect of having, and not having, the IA as it would affect Mr. Hicks' ability to receive a full and fair trial. In other words, what is the defense unable to do themselves if they do not have an IA as requested.

g. Citations to authority that supports the contention that the Appointing Authority must ultimately approve the request in order to ensure that Mr. Hicks receives a full and fair trial.

h. Whether other defense teams for other accuseds before the Military Commission could use the services of the IA provided that client confidentiality can be maintained.

i. The dates that MAJ Mori, Mr. Dratel, and MAL Lippert each were detailed to the case.

4. While reference 1b contains much of the information in paragraph 3 above, it is suggested that the format in paragraph 3 be used "cutting and pasting" from reference 1b as necessary. The defense filing must contain all the information the defense wants the PO to consider on this matter.

5. The information in paragraph 3 above should be filed as soon as possible but NLT 1700 hours, 14 October.

6. The prosecution will respond NLT 3 duty days from receipt. The response will indicate a line by line agreement or disagreement with those facts asserted by the defense. Where there is disagreement, the prosecution will provide its belief as to the facts. The prosecution will also provide its independent views on the need for an IA in order to insure that Mr. Hicks receives a full and fair trial, and its views upon the proposed scope and duties of the IA.

7. The defense submission and prosecution response will be styled in accordance with enclosure 1, and filed in accordance with paragraph 5, POM# 4-3. Ensure the filing designation (PO 111 - Hicks - Defense Request for Investigative Assistance) is part of the filing and email subject line.

BY DIRECTION OF THE PRESIDING OFFICER

KEITH H. HODGES
Assistant to the Presiding Officers

3 Attachments
(Per paragraph 1)



APPOINTING AUTHORITY

OFFICE OF THE SECRETARY OF DEFENSE
OFFICE OF MILITARY COMMISSIONS
1600 DEFENSE PENTAGON
WASHINGTON, DC 20301-1600

October 12, 2005

MEMORANDUM FOR PRESIDING OFFICER, UNITED STATES V. HICKS

SUBJECT: Request for Investigative Assistance in U.S. v. Hicks

In order to provide a forum in which the factual and legal predicate for the attached request may be litigated, I am referring the matter to you for conduct of such proceedings as you deem necessary to determine whether the defense has established that denial of the request, in whole or in part, would deprive the accused of a full and fair trial.

If you determine that the defense has established that failure to provide the requested assistance would deny a full and fair trial, you will immediately forward your findings of fact and law, together with such evidence and other matters as you deem necessary, to me for review and action in accordance with paragraph 4.1.11, DoD Directive 5105.70. If you determine, however, that denial of the request would not preclude a full and fair trial, you may proceed with the ordinary course of commission proceedings, treating matters pertaining to this issue as you would any other pretrial motion.

Appointing Authority
for Military Commissions

Attachment:
Request for Investigative Assistance

cc:
MAJ Michael D. Mori, Defense Counsel
COL Dwight Sullivan, Chief Defense Counsel
COL Morris Davis, Chief Prosecutor





**DEPARTMENT OF DEFENSE
OFFICE OF THE CHIEF DEFENSE COUNSEL
OFFICE OF MILITARY COMMISSIONS**

September 19, 2005

MEMORANDUM FOR MR. JOHN ALTENBURG, APPOINTING AUTHORITY

FROM: Major Michael D. Mori

SUBJECT: U.S. v. Hicks- Request for Investigative Assistance

1. Pursuant to the power of the Appointing Authority under DoDD 5105.70 para. 4.1.11, the defense requests the Appointing Authority provide the defense with confidential expert assistance in the nature of one or more intelligence analysts or an experienced member of the Criminal Investigation Task Force Guantanamo Bay (CITF) to assist the defense in searching, reviewing, segregating, and analyzing any and all records of interrogations, interviews, statements, and other evidence either provided by or obtained from current and former detainees held by JTF-Guantanamo and Criminal Investigation Task Force, Guantanamo Bay as well as locating information contained on classified databases relating to the defense of Mr. Hicks.
2. Over the past several weeks, defense counsel personnel have, with the aid of interpreters, interviewed some 35 detainees held in Guantanamo. While in some of these interviews, the detainees cooperated with defense counsel representatives and discussed topics of interest, the vast majority of the detainees refused to discuss any matters with defense counsel.
3. Among other reasons, Many detainees expressed frustration that the questions asked by defense counsel were designed to elicit information which the detainees had previously revealed and discussed with interrogators many times during the long period of time they had been detained. Most were unwilling to discuss these matters again, and told us to ask the government for their records in which their past interviews were documented.
4. Mr Hicks is charged with conspiracy involving members of or affiliates of al-Qaeda. Also, the prosecution has indicated an intent to introduce evidence relating to al-Qaeda and its operations since the mid-1990's. To properly prepare a defense, the defense counsel must have access to the intelligence and materials accumulated by the U.S. government and its investigative agencies relating to the operations and individuals associated with al-Qaeda.
5. The defense requests the Appointing Authority assign the defense one or more intelligence analysts or CITF investigator with knowledge of the records keeping systems used by CITF and other organizations involved in interviewing detainees and sources of relevant classified information on terrorist organizations. With such an intelligence analyst or CITF investigator assigned to the defense team, the defense will be able to efficiently search for necessary relevant information.
6. Given the vast number of detainee interrogations and interviews conducted at Guantanamo, and the demonstrated difficulties in obtaining relevant and necessary information directly from the detainee, the only viable method of obtaining information from the detainees is to review their past interrogation records and statements with the help of a confidential expert intelligence analyst or CITF investigator.

SUBJECT: U.S. v. Hicks- Request for Investigative Assistance

7. The prosecution office has two such dedicated intelligence analysts assigned. Neither the defense office nor the Hicks defense team have any such assistance assigned. This inequity in assigned resources, access to information, and capabilities makes it impossible for the defense to prepare its case, and destroys any possibility of Mr. Hicks receiving a full and fair trial.

8. For the reasons listed above, the defense requests the Appointing Authority provide the defense with expert assistance in the form of one or more confidential intelligence analysts or CITF investigator to gain access to and assist the defense in searching, reviewing, segregating, and analyzing any and all records of interrogations, interviews, statements, and other evidence either provided by or obtained from current and former detainees held in Guantanamo as well as locating information contained on classified databases.

9. I request the requested assistant be designated as a member of the "Defense Team" so as to allow me to discuss, transmit, communicate, or otherwise share documents or information specific to Mr. Hicks' case. As a member of the "Defense Team", the assistant should also be bound by the rules regarding attorney/client confidentiality.

10. The Defense is making this request on the grounds that Mr. Hicks cannot properly prepare for a military commission without the appointment of investigative assistance to assist with the preparation of Mr. Hicks' defense. Appointing the requested assistance in this matter is paramount to provide for a "full and fair trial" as mandated in the Presidential Order of 13 November 2001 and MCO No. 1, dated 21 March 2002.



M D MORI
Major, USMC
Detailed Defense Counsel

Copy to: Chief Defense Counsel



APPOINTING AUTHORITY


OFFICE OF THE SECRETARY OF DEFENSE
OFFICE OF MILITARY COMMISSIONS
1600 DEFENSE PENTAGON
WASHINGTON, DC 20301-1600

October 12, 2005

MEMORANDUM FOR MAJOR MICHAEL D. MORI, DEFENSE COUNSEL

SUBJECT: Request for Investigative Assistance in U.S. v. Hicks

I have referred your request to the Presiding Officer for consideration as a pretrial motion in support of which you must establish that failure to grant the request would result in denial of a full and fair trial.


Appointing Authority
for Military Commissions

Attachment:
Request for Investigative Assistance

cc:
COL Dwight Sullivan, Chief Defense Counsel
COL Morris Davis, Chief Prosecutor
COL Peter Brownback, Presiding Officer

